



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS  
JOHN CORNYN

September 27, 2000

Ms. Jan Clark  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2000-3719

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 139461.

The City of Houston Police Department (the "department") received a request for "a copy of any video materials produced by the Defensive Tactics Training Staff of [the department] that relate to the use of leg restraints[.]" You have provided for our review a videotape numbered L-94033 and titled "Use of Leg Restraints." You assert that this information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103, the "litigation exception," excepts from disclosure information relating to litigation to which a political subdivision of the state is or may be a party: *See* Gov't Code § 552.103. Section 552.103 was intended to prevent the use of the Act as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-1048 at 4 (1989). The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 at 3 (1990). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103 exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the information is requested, and (2) the information at issue is related to that litigation. Gov't Code § 552.103(c); *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

You have submitted an affidavit from an Assistant City Attorney which states that litigation is pending in the matter of *Denise R. Robinson, et. al., v. City of Houston, et. al.*, cause

number 95-61721, in the 164<sup>th</sup> Judicial District Court of Harris County, Texas.<sup>1</sup> As to the second prong of the above-stated test, the governmental body must identify the issues in the litigation and explain how the requested information relates to those issues. Open Records Decision No. 551 at 5 (1990). Upon review of the submitted materials, your comments, and the submitted videotape, we believe that you have demonstrated for purposes of section 552.103 that the requested information relates to the pending litigation. Thus, we conclude that the department may withhold the responsive information from the requestor pursuant to section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We assume from your comments that the information at issue has not been obtained by or made available to all parties in the pending litigation, and that section 552.103 therefore applies. We note, however, that the applicability of section 552.103 ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Because we are able to resolve this matter under section 552.103, we do not address the section 552.108 assertion.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

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<sup>1</sup>We assume that the litigation was pending on the date that the department received the present request. See Gov't Code § 552.103(c).

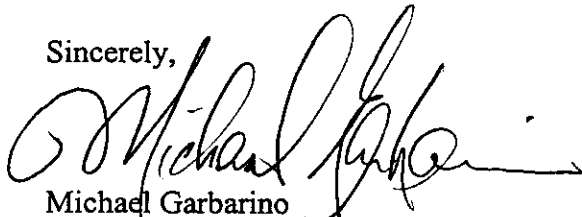
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/pr

Ref: ID# 139461

Encl. Submitted documents

cc: Mr. Mark Nollinger  
CBS News  
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(w/o enclosures)